

1  
2 John R. Benefiel (P 28970)  
3 280 Daines Street  
4 Suite 100 B  
Birmingham, Michigan 48009-6244  
248-644-1455

5 Charles F. Reidelbach, Jr. (167482)  
6 PRESSEISEN & REIDELBACH  
7 The Chamber Building  
8 110 West "C" Street; Suite 714  
San Diego, California 92101  
619-234-4057  
Attorneys for Defendant

9  
10 IN THE UNITED STATES DISTRICT COURT

11 SOUTHERN DISTRICT OF CALIFORNIA

12 NEW AGE PRODUCTS, INC., Case No. 96 2129 J CGA

13 Plaintiff,

14 v

15 PROGRESSIVE INTERNATIONAL  
16 CORPORATION,

17 Defendant.

18  
19 PROGRESSIVE INTERNATIONAL  
CORPORATION,

20 Counterclaimant,

21 v

22 NEW AGE PRODUCTS, INC.,

23 Counterdefendant.

24  
25 DECLARATION OF WILLIAM FISHMAN

26 William Fishman, of 17632 Tam O'Shanter Drive, Poway,  
27 California 92064, makes the following Declaration:  
28

96 JUL 17 11 32  
RECEIVED  
GROUP 1306

1 I am the President of Marketing Services, Inc., a consulting  
2 services business I conduct in the field of marketing from my home  
3 in Poway, California.

4 I make this Declaration under penalty of perjury. The  
5 statements are made of my own personal knowledge and if called to  
6 testify on the witness stand, I would testify in the same manner  
7 as set forth herein.

8 Sometime in 1980, I had contacts with a Mrs. Marian Gillett,  
9 then of 16950 Tesoro Drive, Rancho Bernardo, California,  
10 concerning a kitchen product she had invented. This product was  
11 a flexible kitchen cutting mat.

12 Mrs. Gillett and I agreed that, through my company, Market  
13 Services, Inc., then operated from 11650 Iberia Place, San Diego,  
14 California, we would jointly attempt to market her cutting mat.

15 Pursuant to that effort, in late 1980, I commissioned art  
16 work to be developed for the product packaging insert, the product  
17 to be sold under the trademark "CounterMaid", and attached as  
18 Exhibit 1 is a true copy of that artwork.

19 Mrs. Gillett obtained a quotation for plastic sheets from a  
20 supplier, John E. Stoneman, Inc. of Newport Beach, California, and  
21 attached as Exhibit 2 is a true copy of a quotation she provided  
22 me.

23 In July of 1981, I purchased 3,000 sheets of plastic from  
24 John E. Stoneman, Inc. to be sold as CounterMaid cutting mats, and  
25 attached as Exhibit 3 is a true copy of an invoice covering that  
26 purchase.

27 Over the following months extending into 1982, the  
28 CounterMaid product was offered for sale and sold through various

1 retail outlets in California and elsewhere.

2 I have at my residence a leftover quantity of the original  
3 CounterMaid mats from the original 3,000 purchased in 1981.

4 At the request of John R. Benefiel, Defendants' counsel, on  
5 or about October 30, 1997 I took samples of these CounterMaid mats  
6 to OCM Laboratories of Anaheim, California for testing.

7 I declare under penalty of perjury that the foregoing is true  
8 and correct.

9  
10 Date:

Dec 30, 1997

William Fishman

William Fishman



THE REUSABLE...

# **FLEXIBLE**

# **KITCHEN BOARDS!**

**KEEPS YOUR COUNTERTOP ALWAYS NEW!**

## **HELPFUL HINTS**

### **KEEP IT HANDY**

- A "must" for every kitchen
- Keep one in dad's workshop too!
- Don't forget the camper.

### **EASY TO CLEAN**

- Just rinse with water for most jobs.
- For greasy clean-up ... wipe with paper towel or stand between two plates in dishwasher.
- Will not absorb stains - grape, mustard, even Easter egg dye.

### **MAKE IT NON-SLIP AT THE KITCHEN COUNTER**

- Spread 2 tsp. MINERAL OIL over clean counter and smooth out air bubbles (with straight edge tool such as a food turner). Press the oil out with long strokes until it adheres without slipping.
- Place a second one on top so you can still curl & funnel.

ANOTHER GILLETT PRODUCT FROM  
**MARKETING SERVICES, INC.**  
SAN DIEGO, CALIFORNIA

PATENT  
PENDING

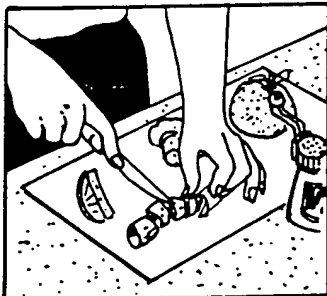


**COUNTER-MAID®**

PACK OF  
**3** FOR **\$2<sup>59</sup>**

THE REUSABLE...  
**FLEXIBLE**  
**KITCHEN  
BOARDS**

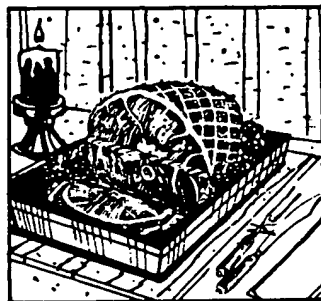
Protects your kitchen counters, cutting boards  
and chopping blocks from expensive permanent  
damage due to cuts and stains.



**CUT & CHOP FOODS!**  
SALADS! CHEESE! MEAT!  
VEGETABLES!  
SAVES KITCHEN COUNTER



**MORE SANITARY!**  
Easy to wash. Dishwasher safe.  
Prevents bacteria build up. Non-  
toxic. Unbreakable.



**CARVE ROASTS! SAVES  
KNIFE SHARPENINGS!**  
Remove roast from pan & carve  
it on your COUNTER-MAID®



**IT'S SHAPEABLE!**

Bend it, shape it into a funnel for any  
vessel. Ideal for preparing foods for  
**CASSEROLES, SALADS,  
WOK OR SKILLET**

Cut, slice and chop your foods  
right on a handy "COUNTER-MAID"  
kitchen board then use it to scoop  
and funnel it right into your cooking  
or serving dish.

**ALSO IDEAL FOR:**  
**PROTECTING SINKS FROM SCRATCHES WHEN POT WASHING.**  
**KNEADING AND ROLLING DOUGH, SIFTING FLOUR (Won't stick)**

**JESINC**

John E. Stoneman, Inc  
 2043 Westcliff Drive  
 Suite 211  
 Newport Beach, CA  
 92660  
 Telex 181-577  
 Telephone  
 714 645-7261

August 29, 1980

Mrs. Marian Gillett  
 16950 Tesoro Drive  
 San Diego CA 92128

Dear Mrs. Gillett:

Listed below is confirmation of prices quoted verbally to you on August 27th.

		<u>10,000</u>	<u>30,000</u>	<u>50,000</u>
9 mil	12" x 14"	110.14/M	92.44/M	83.33/M
	12" x 15"	116.90/M	98.65/M	89.03/M
	12" x 16"	123.80/M	104.85/M	94.78/M
10 mil	12" x 14"	120.76/M	102.11/M	92.20/M
	12" x 15"	130.08/M	108.96/M	98.47/M
	12" x 16"	135.84/M	115.87/M	104.82/M
12 mil	12" x 14"	142.00/M	121.40/M	109.88/M
	12" x 15"	151.10/M	129.69/M	117.48/M
	12" x 16"	160.18/M	137.95/M	125.05/M

These prices are figured without the special packaging.  
 Let us know if you need further information. We will  
 send some 10 mil samples as soon as available.

Yours truly,

*Charlotte Hampton*  
 Charlotte Hampton (aj)

CH:at

**JESINC**

John E. Stoneman, Inc.  
2043 Westcliff Drive  
Suite 211  
Newport Beach, CA  
92660

Telex 181-577  
Telephone  
714 645-7261

**INVOICE**  
**No 9557**

S  
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Marion Gillette  
Marketing Services Inc.  
11660 Iberia Place  
San Diego, Ca 92128

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Same

Invoice Date	7-29-81	Terms	1%/10/N30	Your Order No.	Verbal	Salesman	House	Our Ref. No.
Date Shipped	7-22-81	Shipped Via	UPS					
Qty. Shipped	3000 1000	Description	Newport Beach, Ca					
		11 1/2 x 15	9 mil Kleer Kards	Unit Price	Unit	Amount		
		6 1/2 x 5	9 mil Kleer Kards	\$ 175.00	Lot	\$ 175.00		
Shipment Complete				UPS Charge		\$ 21.74		
						\$ 196.74		

A service charge of 1% per month on the unpaid balance will be made on all past due accounts. Should this rate exceed the maximum rate that is lawful under the circumstances, that maximum rate shall apply. Customer also agrees to pay reasonable attorney's fees and other costs incurred at collection.

ORIGINAL